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Transcript of Conference Call

Date: July 29, 2021

Case: One World Technologies, Inc., et al. -v- Chevron (HK) Limited (PTAB)

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1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD
3

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5 ONE WORLD TECHNOLOGIES, INC., D/B/A
6 TECHTRONIC INDUSTRIES POWER EQUIPMENT,
7 Petitioner,
8 v.
9 CHERVON (HK) LIMITED,
10 Patent Owner.
11

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13 Case IPR2020-00884
14 U.S. Patent No. 9,596,806
15 Case IPR202-00886
16 U.S. Patent No. 9,826,686
17 Case IPR2020-00887
18 U.S. Patent No. 9,986,686
19 Case IPR2020-00888
20 U.S. Patent No. 10,070,588
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REMOTE PREHEARING CONFERENCE

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Thursday, July 29, 2021

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1:00 P.M. CST

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Job No: 388897

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Reported By: Stephanie V. Mosby, Court Reporter

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PREHEARING CONFERENCE, held remotely pursuant to notice
before Stephanie V. Mosby, Court Reporter.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER

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Conducted on July 29, 2021

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P R O C E E D I N G S
(1:00 P.M.)

THE COURT: Good afternoon. This is Judge Mayberry of the Patent Trial Review Board. With me on the line are Judges Grossman and Finmore(phonetic).

This call is the prehearing conference for IPR2020-00884, also -00886, -00887, -00888, One World Technologies, Inc. doing business as Techtronic Industries Power Equipment versus Chervon HK Limited.

The hearing in these matters is scheduled for August 5th, 2021, starting at 10:00 in the morning, eastern time.

We would like to start with appearances. Who do we have on the line for petitioner?

MR. SIKORSKI: Good morning -- afternoon, Your Honor. Edward Sikorski on behalf of One World Technologies. Also on the line is one of our back-up counsel, James Heintz (phonetic).

THE COURT: Thank you, Mr. Sikorski.

And for patent owner?

MR. WOODRIFT: Good afternoon, Your Honor. James Woodrft on behalf of the patent owner, and with me is

1 Benjamin Gilford, and I want to let you know, Your Honor,
2 patent owner did request a court reporter who's also present.

3 THE COURT: All right. Thank you.

4 So with that, patent owner, when the transcript
5 is available if you could just file it as an exhibit in all
6 of these proceedings.

7 MR. SIKORSKI: We will do that, Your Honor.

8 THE COURT: Thank you.

9 So counsel for patent owner identified three
10 items that patent owner wants to cover in this prehearing
11 conference. We will take each in turn. For each, we'll hear
12 from patent owner's counsel and then we'll hear from
13 petitioner's counsel.

14 After we go through these items, we'll ask if
15 either party has anything else they'd like to discuss related
16 to the hearing.

17 Finally, the panel would like to discuss one
18 item.

19 We're going to start with patent owner's first
20 item and that is whether petitioner will be permitted to
21 raise the new reply argument identified as petitioner's
22 motion to strike at the oral hearing.

1 So, Mr. Lukas?

2 MR. LUKAS: Thank you, Your Honor.

3 Your Honor, as the panel knows, patent owner
4 has currently pending motions to strike various new arguments
5 and rationals in the petitioner's replies and so we also --
6 the parties also exchanged demonstratives. Patent owner is
7 prepared to argue motion to strike issues at the hearing.

8 We just wanted some guidance regarding that and
9 whether we should be prepared to do that and then also
10 whether petitioners should be permitted to raise these new
11 arguments and rationals that are the subject of patent
12 owner's motion to strike.

13 Just as a side -- this also implicates certain
14 demonstratives of the petitioner that patent owner did object
15 to and the parties have already met and conferred on, but
16 obviously, we held off doing anything pending this prehearing
17 conference. That's kind of more of a request for guidance
18 regarding the oral hearing and on a motion to strike issues.

19 THE COURT: Thank you, Mr. Lukas.

20 Mr. Sikorski, do you have anything to add to
21 that?

22 MR. SIKORSKI: Not much, Your Honor. Thank you.

1 I believe the papers have been fully briefed.

2 The motion to strike our oppositions -- I think
3 the motions to the oppositions that we submitted explain why
4 no new arguments were raised. It's obvious that our replies
5 rebutted some of the arguments that -- properly rebutted some
6 of the arguments that were contained in patent owner's
7 response, but beyond the briefing, I don't think that there's
8 anything more that needs arguments today from petitioner's
9 side.

10 THE COURT: All right. Thanks, Mr. Sikorski.

11 The second item and that's how the board
12 intends to handle petitioner's additional new arguments that
13 were raised for the first time in petitioner's opposition to
14 patent owner's motion to strike.

15 MR. LUKAS: Yes. Once again, Your Honor,
16 James Lukas for the patent owner. This is another request
17 for some guidance. We've never -- this is a new situation
18 for us. What happened is we have several pending motions to
19 strike -- multiple motions to strike regarding the reply, new
20 arguments, and rationals.

21 What we noticed is in response to our motions
22 to strike, the petitioner raised more merit-related arguments

1 that never appeared in the petition nor the reply.

2 We believe the panel can figure those out, of
3 course, but we were just wondering whether the panel is
4 interested in any additional briefing or whether the panel
5 would not permit those new arguments and rationals to be
6 raised at the hearing on merit-related issues because they
7 appeared in a response to a motion to strike.

8 THE COURT: All right. Thank you, Mr. Lukas.

9 Mr. Sikorski?

10 MR. SIKORSKI: Thank you, Your Honor.

11 The email to the board has several bullet
12 items. If Your Honors want, I'll be glad to walk you through
13 each one of them.

14 The opposition to the motion to strike cited to
15 the record where the motion to strike was trying to knock out
16 arguments that we have included in our reply in opposition to
17 the motion to strike. We reiterated and cited to the record
18 where each of those arguments appeared. When arguments come
19 next Thursday, it will be clearly based on the petition.

20 I will walk Your Honors through where each of
21 these arguments were. I don't know if Your Honor wants me to
22 walk you through the bullet items. It's patent owners

1 emailed request for this particular hearing, but I'm glad to
2 do so.

3 More importantly, at the hearing next Thursday,
4 I'm sure Your Honors will see why each of the arguments for
5 unpatentability are found in the original petition with
6 potentially from a conditional waiver that we included in the
7 reply.

8 THE COURT: Thank you, Mr. Sikorski.

9 For the moment, there's no need to go into the
10 items -- specific items that were identified by patent
11 owner's counsel, although we'll put a pin in that for a
12 minute.

13 What we'll do is talk about these first two
14 items. I think we've kind of led into the third item, and so
15 we'll talk about that in a second. The first two items are
16 somewhat related.

17 The first one -- motion to strike and the
18 argument that patent owner contends in petitioner's reply
19 that represented new argument that its seeking to strike, so
20 the motion to strike remains pending in these matters and
21 they're likely not to be resolved until the final written
22 decision.

1 In that regard, the arguments are still proper
2 and they're still part of the record and petitioner may rely
3 on them at oral argument if petitioner so chooses.

4 As far as these other allegations to
5 merit-based arguments that appear in the oppositions to the
6 motions to strike, again, they haven't been struck, so they
7 are still in the record.

8 But just kind of to take a step back, as we
9 indicated in our hearing order, the petitioner has the burden
10 to demonstrate that the challenged claims are unpatentable
11 and is going to go first.

12 These arguments appear to be in an opposition
13 breach to a motion to strike. We'll consider the opposition
14 breach to the motion to strike when we decide the motion to
15 strike, not when we decide the patentability of the claims,
16 so we'll see where petitioner would be relying solely on
17 information in the opposition brief to the motion to strike
18 in its case in chief when it goes first.

19 So then, of course, after petitioner presents
20 their case in chief, patent owner's going to argue. Patent
21 owner has indicated in their request for oral argument and
22 again here on the call that its prepared to argue its motion

1 to strike when they argue it at oral hearing.

2 In that case when petitioner gets their
3 opportunity to reply to patent owner's responsive arguments
4 at the oral hearing, petitioner can rely on arguments its
5 made in its opposition. Again, they're still part of the
6 record, and the requirement for oral argument is really: As
7 long as an argument appears in a paper in the proceeding,
8 it's proper for a party to rely on that argument at oral
9 hearing.

10 So because any argument that would be in the
11 opposition to the motion to strike would still be properly be
12 in the record come next Thursday, petitioner would be able to
13 rely on anything that's in their opposition brief.

14 So I'm going to take a step back; turn to
15 patent owner; see if there's any questions about that -- if
16 that provides the clarification that you were seeking in this
17 prehearing conference for these two items.

18 MR. SIKORSKI: Your Honor, I think that does.

19 I guess the one follow-up question would be
20 if -- and I say I'm not going to ask you that. I think you
21 answered that already about the arguments in response to the
22 motion to strike. I think that clarifies everything and

1 that's good for patent owner.

2 THE COURT: All right. Great. Thank you.

3 Mr. Sikorski, anything?

4 MR. SIKORSKI: Nothing, Your Honor. Thank you.

5 THE COURT: All right. So kind of circling back to
6 the third item, which we've touched on a little bit, where
7 patent owner was seeking the panel's guidance as to whether
8 additional briefing would be necessary to identify these
9 potentially new arguments that patent owner contends
10 petitioner raises in its opposition to patent owner's motion
11 to strike.

12 What that seems to sound like -- patent owner's
13 seeking authorization to file an additional motion to strike
14 to strike these -- these arguments that patent owner contends
15 represent new arguments.

16 Is that really the case, Mr. Lukas?

17 MR. LUKAS: I think that is right, Your Honor.
18 Yeah. It's just a very unique situation. We didn't know how
19 to style it in our request, but I think that is correct.

20 Whether that is appropriate here or whether the
21 panel feels it can just, you know, I guess adequately divide,
22 you know, the argument and where it comes from.

1 I do believe it might be helpful but obviously
2 for the panel to -- I guess -- to know all of these -- what
3 we contend are all of these new arguments and rationals
4 beyond just obviously the short email that we've provided.

5 If the panel's interested, we would like to
6 make that request and do make that request.

7 THE COURT: Okay. Thank you, Counsel.

8 I want to talk at a little high level right
9 first. Maybe because this is somewhat new territory -- these
10 prehearing conferences.

11 The idea's really to focus on issues that are
12 specifically implicated in the hearing, and I do understand
13 that there might be some conjecture relations because the
14 patent owner wants to argue their motion to strike and these
15 potentially improper arguments could come up in petitioner's
16 reply to them.

17 But I think at this late date it would be --
18 this additional briefing is really not -- isn't really
19 implicated as far as the hearing goes. It would be something
20 different, so this isn't really the proper venue for it.

21 That being said, we are all on a call and it
22 did sounds like perhaps petitioner might be prepared to

1 discuss.

2 So let me put the question to petitioner's
3 counsel: If they're willing to discuss this authorization
4 that patent owner seeks at this time then we can go ahead and
5 just take advantage of us all on the phone and push through
6 this issue, but if petitioner's counsel is not prepared or
7 willing to discuss this at this time then that would be fine.

8 So I will turn it to Mr. Sikorski and see what
9 he would like.

10 MR. SIKORSKI: Your Honor, at this late stage,
11 I think additional briefing would distract the parties from
12 preparing for the actual argument. Again, we're only a week
13 away.

14 I have the utmost confidence in the panel to be
15 able to figure out which of my arguments, petitioner's
16 arguments are found in the petition and/or reply. I don't
17 think Your Honors need to look through additional papers.

18 The record, I think, has been tapered pretty
19 well already, so our inclination would not be to have
20 additional paper filings between now and next Thursday for
21 issues which I think that the board is going to be qualified
22 to determine what is or is not a proper argument come next

1 Thursday.

2 THE COURT: Thank you, Mr. Sikorski, and
3 perhaps I -- I obviously was not clear in my statement.

4 The panel would have no intention for this
5 briefing to be done between now and Thursday. What I was
6 looking more broadly as to whether patent owner was seeking
7 to officially get authorization to file a motion to strike,
8 such as the arguments would be struck prior to us ruling on
9 their already authorized motion to strike and whether
10 petitioner would be prepared at this time to discuss that
11 possibility.

12 To the extent that -- and if we understood
13 right -- that patent owner would be seeking authorization to
14 file a new motion to strike to strike these arguments, if the
15 panel did consider it, we would not consider having briefing
16 prior to the hearing, so those arguments would still be
17 available to petitioner at the oral argument stage.

18 It would really just be if those arguments
19 would somehow be removed from the opposition to the motion to
20 strike when we considered the motion to strike. If that
21 clarified things, that would be great, so I'm going to go
22 back to you, Mr. Sikorski, since this has kind of been thrown

1 on your lap.

2 Does that change what you were going to say?

3 MR. SIKORSKI: Forgive me, Your Honor. I apologize.
4 I'm not sure what Your Honors asking me to do.

5 THE COURT: Do you want to talk about the -- as if
6 this call was about us granting authorization for patent
7 owner to file a motion to strike these potentially new
8 arguments from your opposition to their authorized motion to
9 strike?

10 Are you prepared and willing to talk about that
11 at this point? Like, "at this point," meaning right now.

12 MR. SIKORSKI: Are you referring to the six or
13 whatnot bullet items?

14 THE COURT: Yes.

15 MR. SIKORSKI: I can go through it briefly,
16 Your Honor. I mean, I'm generally aware of what's been found
17 in the past, and I think I'm partial of all that briefing, so
18 I can touch upon it briefly. I don't think that Your Honors
19 want an extensive call.

20 I'm glad to address them at the hearing if
21 that's your preference, but I could just quickly if that's
22 what you're requesting. Either one, Your Honors.

1 THE COURT: Let's hold on for a second. Let's go
2 through the other items that are significant for Thursday, so
3 the first one.

4 The next additional item is: Are there any
5 other items other than the things that we've already touched
6 on, Mr. Lukas?

7 MR. LUKAS: No, Your Honor.

8 THE COURT: Mr. Sikorski?

9 MR. SIKORSKI: No, Your Honor.

10 THE COURT: Okay. Like I said, the panel had one
11 consideration and that is: We would like to know if any
12 confidential information will be used at the hearing.

13 As we understand it, Exhibit 2029 remains
14 sealed in these proceedings, so we just want to make sure if
15 confidential information is going to be used in the hearing
16 that it's appropriately handled.

17 For example, typically, the way these remote
18 hearings are conducted, there is a phone line that members of
19 the public can use to listen on to the hearing, if they so
20 choose. If confidential information is going to be part of
21 the hearing, we need to somehow not allow that or only allow
22 that for a certain time of the hearing.

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1 MR. SIKORSKI: Your Honor, on behalf of petitioner,
2 I don't plan to raise any confidential information. I
3 believe that one of the exhibits are transcripts sealed and
4 should remained sealed but none of the redacted or
5 confidential information is on my list of items to bring up
6 at the hearing.

7 THE COURT: Thank you.

8 Mr. Lukas?

9 MR. LUKAS: On behalf of the patent owner, the
10 patent owner's not intent on raising any confidential
11 information.

12 THE COURT: Thank you. Great.

13 I think as we kind of stumbled through the
14 third item, I think we understand the request. We're going
15 to go ahead and mute this call and talk a little bit among
16 ourselves. We'll be back shortly to wrap this up.

17 (A discussion was held off the
18 record.)

19 THE COURT: All right. The panel is back. We want
20 to thank you for your patience. The first thing we want to
21 do is confirm that the parties are still on.

22 Counsel for petitioner, Mr. Sikorski?

1 MR. SIKORSKI: Yes, Your Honor, still here.

2 THE COURT: Mr. Lukas?

3 MR. LUKAS: Yes.

4 THE COURT: Mr. Lukas, I didn't really hear you.

5 MR. LUKAS: Can you hear me now, Your Honor?

6 THE COURT: I can.

7 So as far as the -- whether we would like
8 additional briefing from the parties related to potentially
9 improper arguments in petitioner's opposition to patent
10 owner's motion to strike, the panel does not believe it will
11 benefit from additional briefing.

12 We will be able to discern merit if there are
13 actually new merit-based arguments in the opposition, and
14 significantly, we would not rely on merit-based arguments
15 that appear in an opposition for a motion to strike and do
16 not appear in petitioner's petition or reply to the patent
17 owner's response. With that, I will go ahead and circle
18 around one more time.

19 Is there anything else from patent owner?

20 MR. LUKAS: No, Your Honor. Thank you, very much.

21 THE COURT: Is there anything else from petitioner?

22 MR. SIKORSKI: No, Your Honor.

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1 THE COURT: And, again, as a reminder, Mr. Lucas,
2 when the transcript from this call's available, could you go
3 ahead and file it as an exhibit?

4 Other than that, I thank everyone for
5 participation. I look forward to hearing arguments this
6 coming Thursday. This call is adjourned. Thank you.

7 (WHEREUPON, the prehearing
8 conference was concluded at
2:27 CST)

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C E R T I F I C A T E O F R E P O R T E R

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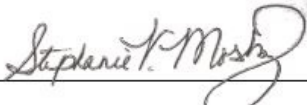
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That I am not a relative or employee or attorney or
counsel, nor a relative or employee of such attorney or
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2 IN WITNESS WHEREOF, I do hereunto set my hand and
3 affix my seal of office this 29th day of July, 2021.
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